IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No.5110 of 2006
Date of decision : 26.10.2006.

Salwan Properties Pvt. Ltd.& Anr.

.....Petitioners.

Versus

Gian Chand and Ors.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Vijay Dahiya, Advocate
for the petitioners.

Mr. P.K. Chugh, Advocate
for respondents No. 2 to 5.

****

VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against an order vide which application of the petitioner for disposal of the suit on the basis of compromise has been declined.

The plaintiffs had filed a suit for declaration seeking decree to the effect that plaintiffs along with defendants No. 7 to 10 were the absolute co-owners in joint possession of the land detailed in para No.1 of the plaint and that the ex parte judgment and decree dated 15.11.1999 passed in civil Suit No. 130 titled Dharampal Versus Jagdish and mutation No. 1442 of 14.6.2002, the lease deed dated 9.9.2002 and mutation No. 1458 of 18.9.2002 are illegal, null and void and not binding on the rights of the plaintiffs. Consequential relief of injunction was claimed against defendant No.1 to 6 and 11 restraining them from interfering in their possession with

an

alternative prayer that if they succeed in taking possession forcibly then the possession be restored to them. During the pendency of the suit the parties had compromised. The copy of the compromise was placed on record as Ex. C1. The learned trial Court rejected the said application vide order dated 24.5.2006 primarily on the ground that the decree of the Civil Court can be set aside on the ground of fraud and misrepresentation and in absence thereof no exparte decree could be set aside. The petitioner herein filed review petition against the said order the same was also dismissed vide order dated 31.5.2006. The learned trial Court reproduced the provisions of order 23 Rule 3 C.P.C. which read as under :-

> "Compromise of suit:- Where it is proved to the satisfaction of the court that as suit has been adjusted wholly or in part by way of lawful agreement or compromise (in writing and signed by the parties), or where the defendant satisfies the plaintiff in respect of the whole or part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit)."

In spite of clear stipulation that it is open to the party to seek a decree on account of adjustment of claim as wholly or partly or by

way of compromise, still the learned Court below has rejected the application mainly on the ground that in absence of fraud or misrepresentation no decree could be set aside. The finding recorded, therefore, goes contrary to provision of order 23 Rule 3 C.P.C.and the order can not sustain. This revision petition is accepted. The impugned order is set aside. The suit is decreed in terms of compromise Ex. C 1.

October 26,2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**